

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, and its Local No. 1853 (Saturn Corporation) and Earl Lee. Case 26-CB-3508

February 13, 2001

DECISION AND ORDER

**BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN AND WALSH**

Upon a charge filed by Earl Lee, the Charging Party, on November 25, 1996, the General Counsel of the National Labor Relations Board issued a complaint on March 5, 1997, and an amendment to the complaint on March 21, 1997, against the Respondents, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and its Local No. 1853 (Local 1853) (separately and collectively, the Union), alleging that they had violated Section 8(b)(1)(A) of the National Labor Relations Act. Specifically, the complaint alleges that the Union violated the Act by promulgating a policy requiring employees who had “withdrawn dishonorably” from the Union, i.e., resigned from the Union while remaining in bargaining unit positions in which they continued to be represented by the Union, to pay a fee equivalent to the dues for the period of nonmembership if they should seek to rejoin the Union, while allowing employees who had “honorably withdrawn,” i.e., resigned from the Union because they had taken a position outside the bargaining unit, to rejoin without having to pay such a fee. Respondent UAW and Respondent Local 1853 each filed an answer to the complaint and to the amended complaint admitting in part and denying in part the allegations in the complaint and the amended complaint. On June 4, 1997, the General Counsel filed a Motion for Summary Judgment, and the Respondents filed a joint Cross-Motion for Summary Judgment.¹

¹ In their Cross-Motion for Summary Judgment, the Respondents state that the General Counsel’s Motion for Summary Judgment fails to note that in their respective answers to the complaint in this case, the Respondents denied that they were both the recognized collective-bargaining representatives of the unit employees and asserted instead that the UAW alone was that representative. They also state that the General Counsel’s Motion for Summary Judgment fails to note that their respective answers deny the complaint allegation that they both published the language at issue here. In this regard, the Respondents assert that this is incorrect, that *The Wheel*, the newsletter in which the language was published, is solely Local 1853’s publication and that the UAW, in effect, is neither responsible for the language nor has adopted it as its own. Finally, although the language appeared in a Local 1853 publication, “the Local does not concede that the article necessarily represents an official policy of the Local.” In view of our decision to grant the Respondents’ Cross-Motion for Summary Judgment and dismiss the complaint, we find it unnecessary to resolve these issues.

On June 5, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel’s motion should not be granted. Thereafter, the Charging Party filed a brief in support of the General Counsel’s Motion for Summary Judgment and a brief in opposition to the Respondents’ Cross-Motion for Summary Judgment and the Respondents each filed a response to the General Counsel’s Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions for Summary Judgment

The facts with respect to the motions are as follows. Since 1985 Respondent UAW and/or Respondent Local 1853 have represented a bargaining unit consisting of operating and skilled technician employees employed by Saturn Corporation at its facility in Spring Hill, Tennessee. Since Tennessee is a “right-to-work” state, unit employees are not required to join the Union or to pay any financial core fees to it.² Respondent Local 1853 publishes a newsletter for the Saturn employees entitled *The Wheel*. In the October 1996 issue of *The Wheel*, Respondent Local 1853 published the following article (emphasis added):

The Wheel has occasionally published the names of those team members who have chosen to withdraw from the Union for various personal reasons when they have not been happy with membership actions. Occasionally team members have asked why only those team members who have withdrawn while still performing bargaining unit work have their names published and not those who have gone to non-represented (non-rep) positions.

There are two ways to leave the union: one being an honorable withdrawal, the other being a dishonorable withdrawal. When a team member be-

² Sec. 14(b) of the Taft-Hartley Act (29 U.S.C. § 164(b)) prohibits the “execution or application” of union-security agreements in states where such agreements are prohibited by law. Jurisdictions that have outlawed union-security agreements are commonly known as “right-to-work” states. Unless otherwise prohibited by State law, the first proviso to Sec. 8(a)(3), set out at fn. 3 below, permits an employer and a union to enter into a collective-bargaining agreement that requires employees to become “members” of the union as a condition of employment. The proviso is the statutory authority for such union-security agreements. In *NLRB v. General Motors*, 373 U.S. 734, 742 (1963), however, the Supreme Court described an employee’s “membership” obligation under a union-security clause as “whittled down to its financial core,” i.e., the payment of an amount equivalent to union initiation fees and dues. Further, in *Communications Workers v. Beck*, 487 U.S. 735, 762–763 (1988), the Court concluded “that § 8(a)(3) . . . authorizes the exaction of only those fees and dues necessary to ‘performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.’”

comes a non-rep at Saturn, they cease to perform work, which belongs to the UAW. They are no longer entitled to representation by the UAW. They receive a card from the union which states that they have honorably withdrawn and have left in good standing with all dues paid up to the point of their leaving the bargaining unit.

On the other hand, when a team member quits the union while still performing work that the UAW has negotiated, they withdraw dishonorably and are no longer in good standing. *If a team member who has honorably withdrawn subsequently returns to the bargaining unit, they begin paying dues only upon their re-entry, those who have withdrawn dishonorably must pay all back dues in order to return to a status of good standing.*

From this edition on, the names of those who are not in good standing will be published in every edition of *The Wheel*. Hopefully that list will soon be nonexistent, and we will have a local where every person works to build the union from within instead of destroying it by leaving.

The issue here is whether the Union violated Section 8(a)(1)(A) by maintaining this policy. The General Counsel asserts that the Union's policy coercively restrains employee-members from exercising their right to resign from the Union,³ and is impermissibly discriminatory because it applies only to employees who continue to work in the bargaining unit and not to employees who have left the bargaining unit. For the reasons set forth below, we find that the Respondents did not violate the Act.

Section 8(b)(1)(A) of the Act states:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Pro-*

³ The Supreme Court in *Pattern Makers v. NLRB*, 473 U.S. 95, 104 (1985), held that a union violates Sec. 8(b)(1)(A) when it places restrictions on the right to resign, because such restrictions are inconsistent with the policy of voluntary unionism implicit in Sec. 8(a)(3) of the Act.

Sec. 8(a)(3) provides in pertinent part:

It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this [Act], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later[.]

vided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein[.]

In the Motion for Summary Judgment, the General Counsel contends that the present case is effectively controlled by “those cases which have found that it is a violation of Section 8(b)(1)(A) for a union to require employees who have resigned from the Union to pay a ‘reinitiation fee’ when a financial core obligation arises when a union-security clause springs into effect,” relying principally on *California Saw & Knife Works*, 320 NLRB 224, 247–248 (1995), *enfd. sub nom. International Assn. of Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub. nom. Stang v. NLRB*, 525 U.S. 813 (1998); *Office Employees Local 2 (Washington Gas)*, 292 NLRB 117 (1988), *enfd. sub nom. NLRB v. Office Employees Local 2*, 902 F.2d 1164 (4th Cir. 1990); *Professional Engineers Local 151 (General Dynamics)*, 272 NLRB 1051 (1984). In *California Saw*, the union informed former members that, as a condition of continued employment, they were required to pay a reinstatement fee when a new collective-bargaining agreement with a union-security clause became effective. Similarly, in *Washington Gas*, the union demanded that an employee, who had resigned from the union, pay a new initiation fee or be discharged under a union-security provision, and in *General Dynamics*, employees, who had resigned from the union, were required to pay new initiation fees, even if they did not choose to become full members, or face having the union “take action against them” under a union-security provision.⁴

We reject the General Counsel's contention that those cases—which pertain to union fees imposed in connection with the enforcement, or potential enforcement, of a union-security provision as a condition of continued employment—extend to the facts presented here. Rather, we find that the absence of a compulsory union-security clause here is determinative in analyzing the legality of the Union's policy, because employees face no employment sanctions for any decision related to

⁴ The General Counsel also cites *Ferro Stamping & Mfg. Co.*, 93 NLRB 1459, 1460, 1484–1486 (1951), in which the Board held that the union violated Sec. 8(b)(5) of the Act by requiring certain employees in the unit on the effective date of a union-security provision to pay a higher initiation fee than newly hired employees. The Board further found, however, that union membership requirements imposed before the effective date of the union-security clause did not violate Sec. 8(b)(1)(A) because “[u]ntil such time as employees become contractually obliged to join, the admission fees that a union imposes, and the basis in which such fees are imposed, . . . are matters lying outside the purview of the Act or the scrutiny of the Board.” *Id.* at 1495.

union membership. Employees may resign their union membership, while continuing to work in the bargaining unit, and are under no compulsion to continue any form of membership. An employee's decision to rejoin the Union is, therefore, wholly voluntary. And because the financial obligation under the Union's policy can be incurred only at the option of the employee, there is no basis for finding that the Union's policy would deter members from resigning.⁵ Accordingly, in the absence of a nonvoluntary sanction of any kind, the Union's rule is neither coercive in character, nor a restraint on resignation.

Distinguishing between reinitiation fees in a union-security context, and the context presented here, is consistent with cases that recognize voluntariness of union membership as a touchstone of Section 8(b)(1)(A). For example, in upholding a union rule setting a ceiling on the daily wages that members working on an incentive basis could earn, and enforcing that rule by fines, the Supreme Court in *Scofield v. NLRB*, 394 U.S. 423 (1969), emphasized that the rule applied only to those who "have chosen to become and remain union members," and that if the member did not want to be subject to the limitation, the member "could leave the union. . . ." 394 U.S. at 435. See also *id.* at 429 fn. 5 (noting that although union and employer violate the Act where employee is discharged for violation of a union rule limiting production, "a union member, so long as he chooses to remain one, . . . is subject to union discipline"). (Emphasis added.) Similarly, Section 8(b)(1)(A) does not prohibit labor organizations from adopting a rule forbidding the crossing of a picket line during a strike, and enforcing that rule against *voluntary* union members by a reasonable fine. See *Scofield*, 394 U.S. at 428, discussing *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967). By contrast, unions may not fine former members who choose to resign and return to work during a strike. *Pattern Makers League v. NLRB*, *supra*; *NLRB v. Textile Workers Local 1029*, 409 U.S. 213 (1972).

We also find that the policy's imposition of a fee only on those voluntarily rejoining the Union from a bargaining unit position, rather than from a nonunit

position, is not discriminatory. Former members who have left the bargaining unit entirely have been unrepresented by the Union during the withdrawal period. By contrast, those who have remained in the bargaining unit have continued to receive the benefits of union representation at all times. In these circumstances, we find that, in the absence of an employment-related sanction, the union policy at issue here reflects a legitimate distinction between bargaining unit employees and nonbargaining unit employees, and is not discriminatory as applied to former members who have remained in the unit and who voluntarily elect to rejoin the Union.⁶

Finally, in addition to our finding that the Union's policy is not coercive or discriminatory, we also find that the policy constitutes a legitimate exercise of the Union's right under the proviso to Section 8(b)(1)(A) "to prescribe its own rules with respect to the acquisition or retention of membership therein."⁷

Here, the Union is exercising its right to conduct its own internal affairs with respect to the "acquisition" of membership in its organization, by establishing a reasonable requirement for individuals who, having chosen to leave the Union, voluntarily seek to rejoin. The Union's policy meets the test set forth in *Scofield*. The Union clearly has a legitimate interest in establishing criteria for voluntary union membership. Indeed, we have recognized that, in vindication of union interests protected by the Section 8(b)(1)(A) proviso, unions can protect their members from "compelled association" with those who have chosen to leave the union.⁸ The

⁶ Significantly, the payment of back dues by former members who have remained in the bargaining unit and who contemplate a voluntary return to union membership is no greater in amount than the dues already paid by fellow bargaining unit employees who retained their union membership. Thus, the fee itself is not punitive since it is precisely equivalent to the dues paid by nonresigning unit members who also have received the benefits of representation. Although the Union could not compel the payment of back dues through coercive means for periods when there was no legal obligation to pay such dues, the decision to pay the back dues here is not compelled and is entirely the product of a voluntary decision to rejoin the Union.

⁷ As the *Scofield* Court explained:

§ 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule. 394 U.S. at 430.

⁸ *Food & Commercial Workers Local 81 (MacDonald Meat Co.)*, 284 NLRB 1084, 1086 (1987). There, we held that a union may lawfully expel or suspend employees who resign union membership and return to work during a strike, recognizing that the union's right to expel or suspend was the "logical corollary of a member's unrestricted right to resign." Thus, just as "we have protected resigning employees from compelled association with other union members, so, in vindication of the interests protected by the proviso, we should protect the

⁵ The Charging Party contends that employees could interpret the language in the union article, which requires payment of the equivalent of back dues from those who "return to the bargaining unit," as requiring payment of back dues simply to be able to return to the bargaining unit, not to rejoin the Union. We do not believe that language, viewed in the context of the entire article, can be read as the Charging Party suggests. Throughout the article, it is clear that the Union is addressing members "who have withdrawn while still performing bargaining unit work . . ." The Charging Party's additional speculative interpretations are equally without basis.

Union's policy vindicates that interest by establishing a noncoercive, nondiscriminatory, and nonpunitive option for the reacquisition of membership by former members who, as bargaining unit employees, continued to be represented by the Union, and who elect to rejoin under no compulsion and subject to no employment sanction. In our view, this policy is consistent with both the Section 7 right of an employee to resign voluntarily from the Union and to remain a nonmember and the Union's right under the Section 8(b)(1)(A) proviso to prescribe its own rules for those who may voluntarily seek to acquire or reacquire union membership.

union members who chose to stay from compelled association with those who choose to leave."

Accordingly, we find that the Union's policy neither restrains nor coerces members in the exercise of their Section 7 right to resign from the Union and is privileged by the proviso to Section 8(b)(1)(A). It follows that the union policy at issue here is not violative of Section 8(b)(1)(A) of the Act. We shall therefore deny the General Counsel's Motion for Summary Judgment and grant the Respondents' Cross-motion for Summary Judgment.

ORDER

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that the Respondents' Cross-Motion for Summary Judgment is granted and the complaint is dismissed.